

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1220 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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TRUSTEE OF SHRI JAIN SWETAMBERMURTI PUJAK TAPGACHH SANGH

Versus

DHARSI KANJI OF JUNAGADH  
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Appearance:

MR SURESH M SHAH for Petitioner  
MR PV HATHI for Respondent No. 1, 2  
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CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 23/02/2000

ORAL JUDGEMENT

#. Present Revision Application has been filed by the plaintiff who instituted Regular Civil Suit No. 60 of 1975 before the learned Civil Judge (JD) at Manavadar. Aforesaid suit was filed for getting the decree for possession of the suit premises which is a shop on the

ground that the said premises was originally let out to one Kanji Savji and that defendants nos 1 and 2 are his children. The deceased tenant was using the suit shop for his tailoring business. According to the plaintiff after the death of original tenant his son is doing Government job and his daughter is married and she is not concerned with the suit shop in any manner. It was also stated that the tenant has also not paid the rent since 1.7.73. That his heirs are not the tenants as per law and that the suit premises is also not used for more than 6 months immediately preceding the suit. On all the aforesaid grounds, aforesaid suit was filed by the landlord for getting the possession of the suit premises from the defendants. The defendants appeared in the suit and filed their written statement at exh 11. It was pointed out by them that they have paid the rent and they are not in arrears of rent. It was stated that they are using the suit shop and that there was no substance in the contention that the same is not used by them. In substance the aforesaid ground of non user raised by the plaintiff was denied in their written statement.

#. The Trial Court framed various issues at exh.12 and after recording the evidence of the parties came to the conclusion that the plaintiff has failed to establish that the defendants were not using the suit premises as alleged in the plaint. The Trial Court also negatived the case against the defendants regarding arrears of rent and therefore, the suit was dismissed. So far as the question of transmissaion of tenancy is concerned the Trial Court came to the conclusion that the defendants are the heirs as per the provisions of section 5(11)(c) of the Bombay Rent Act.

#. Aforesaid decree of the Trial Court was challenged by the original plaintiff by way of Regular Civil Appeal No.138 of 1980 in the court of the learned District Judge, Junagadh. The learned Appellate Judge by his judgment and order dated 8.12.1982 dismissed the Regular Civil Appeal No. 138 of 1980 and confirmed the judgment and order passed by the Trial Court.

#. Aforesaid judgment and order of the learned Appellate Judge is challenged in the present Revision Application.

#. At the time of hearing of this Revision Application Mr. Suresh M.Shah learned iadvocte for the petitioner has pointed out that the order of the learned Appellate Judge is very cryptic and the learned Appellate Judge has not at all discussed the evidence on record except making some passing observations about the documentary evidence

on record. On going through the judgment of the learned Appellate Judge I find that the learned Appellate Judge has not discussed the evidence in detail so far as the question of non user of the suit premises is concerned. The learned Appellate Judge has observed in para 10 of his judgment as under:

" The Trial Court has been pleased to hold after referred to the evidence that the shop in question was being used. For that reference has been made to electricity bills and certain measurement books and other documents produced by a cousin of the defendants. This clearly shows that the shop was being used and hence the trial court has rightly decided that the plaintiffs have not been able to establish the non-user for six months and more prior to the filing of the suit. In that view of the matter, the point will have to be decided in the negative. The point is answered accordingly."

#. Mr. Shah has pointed out that so far as the reference about electricity bill or measurement book etc. are concerned, these are all documents related to the period after the filing of the suit and therefore, according to Mr. Shah it cannot be said that the defendants were using the suit premises within six months preceeding the filing of the suit. According to him therefore, the aforesaid reasoning of the learned Appellate Judge for dismissal of the appeal is contrary to the provisions of section 13(1)(k) of the Bombay Rent Act. The learned Appellate Judge has not discussed the oral evidence of both the sides in his judgment and it seems that the learned Appellate Judge has relied upon the aforesaid documents of which reference is made by me hereinabove. At this stage it is necessary to make reference to section 13(1)(k) of the Bombay Rent Act. Section 13(1)(k) reads as under:

" that the premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of six months immediately preceding the date of the suit; or"

Therefore, the documents which are subsequent in point of time i.e. after the filing of the suit may not be useful for the defendants to prove that they were using the suit premises within the stipulated time before the filing of the Suit. Mr. Hathi learned advocate for the

respondents herein pointed out that the respondent no.1 has already stated in his oral evidence that he was using the suit premises all through out and the Trial Court had appreciated all these facts at the time of dismissing the suit on the ground of non user of the premises. However, looking to the reasoning of the Appellate Judge I am satisfied that the learned Appellate Judge has not discussed the evidence. The reasoning of the learned Appellate Judge on this point is absolutely criptic. The documentary evidence which is discussed by the learned Appellate Judge relates to the period after the filing of the suit. Mr. Hathi on the other hand argued that considering the conduct of the parties as well as the evidence on record also it can be presumed that the premises was used by the tenant or even otherwise the tenant can point out to the court that though there was non user for sometime it was because of sufficient reasons. However, in my view the aforesaid aspect was required to be considered by the learned Appellate Judge in his judgment. The first appellate court is the final court so far as the appreciation of evidence is concerned. It is open for for the court to believe the oral evidence of a party but that exercise is required to be done by the Appellate Court. As a matter of fact the learned Appellate Judge has not given his own reasoning at all and he has merely agreed with the reasoning of the Trial Court without giving his own reasoning or without the analysis of the evidence on record. In that view of the matter there is no other alternative but to remand the matter back to the learned Appellate Judge for the purpose of considering the evidence on record in so far as the question of non user of the suit premises is concerned. It will be open for the learned Appellate Judge to come to his own conclusion after considering the entire evidence on record i.e. oral as well as documentary. Since I find that the learned Appellate Judge has not discussed the evidence at all and has merely relied upon the reasoning of the Trial Court the matter is required to be remanded back to the Appellate Judge. I accordingly set aside the order of the learned Appellate Judge passed in Regular Civil Appeal No. 138 of 1980. Aforesaid appeal is restored on the file of the learned Appellate Judge. Said appeal is to be disposed of again on merits and as per the observations made hereinabove. It will be open for the learned Appellate Judge to come to his own conclusion on the basis of appreciation of evidence on record both oral and documentary. The petitioner as well as the respondents herein are directed to appear before the learned District Judge on 20.4.2000. Thereafter the learned Appellate Judge may dispose of the appeal as per the convenience of

the court. Subject to what is stated hereinabove, the Revision Application is allowed. Rule is made absolute with no order as to costs.

(P.B.Majmudar.J)

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